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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MIKO STAFFORD, as an individual
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

BRINK'S, INCORPORATED, a
Delaware Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 14-1352-MWF(PLAx)

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT, OR
ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT**

Date: July 28, 2014
Time: 10:00 a.m.
Court: 1600
Judge: Hon. Michael W. Fitzgerald

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1 **I. INTRODUCTION**

2 Simply put, Defendant Brink's, Inc.'s ("Defendant") Motion for Summary
3 Judgment should be denied because all existing, published authority holds that
4 Defendant's wage statements violate California Labor Code Section 226(a)(6), as a
5 matter of law. As Defendant agrees, Section 226(a)(6) requires an employer to
6 specify on an employee's wage statement "the inclusive dates of the period for
7 which the employee is paid."

8 In the only two published cases addressing Labor Code Section 226(a)(6)'s
9 requirements, *Willner v. Manpower, Inc.*, _ F. Supp. 2d __, 2014 WL 1303495
10 (N.D. Cal. March 31, 2014), and *McKenzie v. Fed. Exp. Corp.*, 765 F. Supp. 2d
11 1222, 1229 (C.D.Cal.2011), both the Northern and Central District Courts held that
12 an employer violates Section 226(a)(6) if it does not include the start date of the
13 pay period. Further, in *Willner*, the District Court squarely rejected the very same
14 argument being made in this case. In particular, here, Defendant argues that by
15 listing "every" date worked by Plaintiff on her paystubs, it has complied with
16 Section 226(a)(6). In *Willner*, however, the District Court found such an argument
17 "unpersuasive": "[t]his argument is unpersuasive, because the dates on which an
18 employee worked in any given pay period do not necessarily shed light on the date
19 on which the pay period began...." 2014 WL 1303495, at *8.

21 Defendant fails to cite any authority to the contrary. Indeed, Defendant's
22 complete failure to mention the *Willner* case, despite being informed of said case
23 during the parties' meet and confer exchange, is quite telling. As such, Plaintiff
24 Miko Stafford ("Plaintiff") respectfully requests that this Court follow *McKenzie*,
25 765 F. Supp. 2d at 1229, and *Willner*, 2014 WL 1303495, at *8, and deny
26 Defendant's Motion for Summary Judgment.

27 In the event that the Court is inclined to grant Defendant's Motion, Plaintiff
28 respectfully requests a continuance of the hearing on the Motion so that Plaintiff

1 can conduct further discovery pursuant to Federal Rule of Civil Procedure 56(d), in
 2 light of Defendant's refusal to provide a FRCP 30(b)(6) witness as requested and
 3 noticed by Plaintiff.

4 **II. STATEMENT OF FACTS**

5 Plaintiff worked as a non-exempt hourly employee at Defendant's Los
 6 Angeles Branch from April 2008, until February 12, 2013, when Plaintiff began a
 7 medical leave of absence through April 12, 2013. (Fact Nos. 3-4). On or about
 8 March 29, 2013, Plaintiff was placed on medical leave of absence through October
 9 28, 2013, due to complications associated with her pregnancy, including as a result
 10 of her diabetes. (*Id.*) On or about September 26, 2013, Plaintiff delivered her baby
 11 through a cesarean section, which required Plaintiff to remain on leave until
 12 November 24, 2013. (*Id.*) Plaintiff was cleared to work without restriction on
 13 November 25, 2013. (*Id.*)

14 Even though Plaintiff was on a protected medical leave of absence, on or
 15 about June 26, 2013, Defendant informed Plaintiff that her leave benefits had
 16 expired and that she would be terminated if she did not return to work as of August
 17 27, 2013. (*Id.*) Given that Plaintiff's physicians had placed Plaintiff on a medical
 18 leave of absence through November 24, 2013, she was unable to return to work.
 19 (*Id.*) On August 27, 2013, Defendant automatically terminated Plaintiff's
 20 employment without attempting to engage in any interactive process with Plaintiff,
 21 or attempt to offer any reasonable accommodations. (*Id.*)

22 During the relevant time period, Plaintiff received eight wage statements,
 23 but none of the wage statements specify the start date of the pay period. (Fact Nos.
 24 6-8). As Defendant admits in its Statement of Facts, "[n]one of the wage
 25 statements at issue use the phrase 'Period Beginning' to designate the first date o
 26 Brink's payroll period during which Plaintiff could have been paid...." (Def.'s
 27 Memo. at p. 3:24-26).
 28

1 In fact, there is absolutely nothing that appears on any of the wage
 2 statements which references a “pay period begin date” or anything remotely to that
 3 effect. (*See* Def.’s Exs. 15-22). Rather, and as admitted to by Defendant, and as
 4 plainly undisputed by the wage statements themselves, the non-vacation wages pay
 5 statements identify information pertaining to only various dates that the employee
 6 punched in/out of the time clock, and the number of hours purportedly worked on
 7 each respective date (the “Time Card Detail”). (*See* Def.’s Memo. at pp. 2:20-
 8 3:26; Fact Nos. 6-8; Def.’s Exs. 15-22). The Time Card Details also omit any
 9 reference to any year and instead refer to only what appears to be a month and day,
 10 e.g., “2/22.” (*Id.*)

11 Significantly, as to the pay statement reflecting the payment of vacation
 12 wages, it not only fails to identify the pay period start date, it also fails to include
 13 any of the Time Card Detail information. (*See* Def.’s Memo. at p. 3:19-23; Def.’s
 14 Ex. 22).

15 While the wage statements do not identify a pay period begin date, each
 16 wage statement does identify a “Period Ending” date. For example, with respect to
 17 the wage statement with the January 25, 2013 “Advice Date,” the “Period Ending”
 18 date is identified as January 20, 2013, while the time card detail section identifies
 19 dates of “1/7-1/11,” and “1/15-1/18. (Def.’s Ex. 19). Indeed, for each wage
 20 statement that contain a time card detail section, the “Pay Ending” date never
 21 matches the last date identified in each respective time card detail section (*e.g.*,
 22 period ending date of Jan. 20, 2013, while time card detail section lists “1/18,”;
 23 period ending date of Feb. 17, 2013, while time card detail section lists “2/12”;
 24 etc..... (Def.’s Exs. 15-21). As further explained below, this is a key distinction
 25 that completely discredits Defendant’s arguments.

26 Finally, with respect to the wage statement with “Advice Date” of February
 27 22, 2013, Plaintiff was not only paid for wages based on the hours she purportedly
 28

1 worked for the dates set forth in the time detail section (“2/4-2/7” and “2/12”), but
 2 Plaintiff also was paid additional vacation wages on this same wage statement.
 3 (Def.’s Ex. 21). However, nothing on the Time Card Detail section, nor anywhere
 4 else on the wage statement shows which date(s) such vacation wages for which
 5 Plaintiff was being paid. *Id.* This is yet another key distinction that completely
 6 refutes Defendant’s arguments.

7 Because of the absence of the requisite pay start date and the inconsistency
 8 between the “Period Ending” date and the last date worked identified on the
 9 respective time card detail section, Plaintiff could not ascertain the wages for
 10 which she was being paid. As Plaintiff testified:

11 Q. You don't know whether you checked your paycheck which –

12 A. I checked my paychecks, but I didn’t -- there was no starting
 13 date, **so it was hard for me to know what week I was getting**
 14 **paid for ... because there was no beginning date.**

15 ***

16 Q. So are you confused because the last day you worked, January
 17 4th, doesn't match up with the pay Period Ending date listed on
 18 the top of the Earnings Statement, January 6th; is that why
 19 you're confused?

20 A. **I'm confused because there's no beginning date. So it**
 21 **throws off what my ending date is.** It says the 6th here; it says
 22 the 4th, so –

23 Q. So you wouldn't expect -- well, let me try that again. The
 24 ending -- I'm trying to understand what the source of your
 25 confusion is about the ending date – the Period Ending date not
 26 matching the last day you worked during that two-week period.

27 A. **Because there's two different dates, and there's no**
 28 **beginning date** -- because here it says Monday, there's no
 Tuesday, Wednesday, Thursday, Friday, then there's Monday,
 Wednesday, Thursday, Friday again, and there's no beginning
 date. **I don't know when the pay period started.**

(Stafford Dep. 20:23-21:4, 31:7-25, emphasis added, *see also* 54:12-17; *see also*
 Stafford Dec. at ¶¶ 3-4).

Further, the only way Plaintiff could verify the accuracy of the hours on the Time Card Detail was to compare it with her actual punch in and punch out records contained in Defendant's time clock. (*See* Fact No. 11). Thus, the "Time Card Detail" actually creates confusion, which Defendant does not dispute. (*See* Fact Nos. 12 & 14).

III. ARGUMENT

A. The Legal Standard for Summary Judgment

Summary judgment may only be granted where the pleadings and supporting documents, viewed in the light most favorable to the nonmoving party, "show[] that there is no genuine [issue of material] dispute as to any material fact" and the moving party "is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). If the party moving for summary judgment meets its initial burden of putting forth admissible evidence that shows the absence of any genuine issues of material fact, "the non-moving party must set forth, by affidavit or as otherwise provided in Rule 56, 'specific facts showing that there is a genuine issue for trial.'" *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). In judging evidence at the summary judgment stage, the Court does not make credibility determinations or weigh conflicting evidence, and must view the facts in the light most favorable to the non-moving party and give it the benefit of all reasonable inferences to be drawn from those facts. *See T.W. Electric*, 809 F.2d at 630–31 (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)); *Kousar v. Mueller*, 549 F. Supp. 2d 1194, 1197 (N.D. Cal. 2008) (citing *Matsushita Elec. Indus. Co., Ltd.*, 475 U.S. at 587).

B. Defendant's Wage Statements Actually Violate Labor Code Section 226(a), As a Matter of Law

Again, California Labor Code Section 226(a)(6) specifically requires an

1 employer to specify on an employee's wage statement "the inclusive dates of the
2 period for which the employee is paid."

3 Two published opinions (and a third unpublished decision) have uniformly
4 held that, to comply with Section 226(a)(6), the employer must list the actual pay
5 period start date on the employee's paystub.

6 Specifically, in *Willner v. Manpower, Inc.*, _ F. Supp. 2d _, 2014 WL
7 1303495 (N.D. Cal. March 31, 2014), the District Court held that the employer in
8 that case violated Labor Code Section 226(a)(6) by failing to list the pay start date.
9 In *Willner*, the employer argued that its inclusion of a time card detail listing each
10 and every date that the employee worked during the pay period complied with
11 Section 226(a)(6)'s requirement to list the "inclusive dates of the period for which
12 the employee is being paid" – the very same argument currently made here by
13 Defendant *Id.* at *8. Based on this very argument, the employer (just as
14 Defendant does here) sought summary judgment. Not only did the District Court
15 reject the employer's arguments, but the District Court went further and actually
16 held that the wage statements did indeed violate Section 226(a)(6):
17

18 [T]he Court concludes that the statements at issue **do not contain the**
19 **requisite "the inclusive dates of the period for which the employee**
20 **is paid" under Section 226(a)(6), because only the pay period end**
21 **date, and not the start date of the pay period, is included on the**
22 **statement.** Manpower argues that it satisfied the "inclusive dates"
23 requirement of Section 226(a)(6) by including "every work date" for
24 which Willner was paid. This argument is **unpersuasive, because the**
25 **dates on which an employee worked in any given pay period do**
26 **not necessarily shed light on the date on which the pay period**
27 **began.... The "inclusive dates" required by Section 226(a)(6) refer**
28 **to the start and end date of the pay period and necessarily must**
include the start date of the pay period in order to give meaning
to the word "inclusive." A failure to include the start date of the
pay period in a statement constitutes a violation of Section
226(a)(6).

Id. at *8 (emphasis added).

1 Likewise, in *McKenzie*, 765 F. Supp. 2d 1222, the District Court held that
 2 defendant violated Section 226(a)(6), as a matter of law, by failing to include the
 3 pay period beginning date on its employees' wage statements. *Id.* at 1229-31.

4 Similarly, in *Lopez v. G.A.T. Airline Ground Support, Inc.*, 2010 WL
 5 2839417, at *6 (S.D. Cal. July 19, 2010), the District Court held that defendant
 6 violated Section 226(a)(6) by failing to include the pay period beginning date on
 7 the wage statements it issued to its employees.

8 Thus, based upon a plain reading of the statute and the cases interpreting the
 9 statute, Section 226(a)(6) requires wage statements to list the beginning date of the
 10 pay period. Here, it is undisputed that Defendant does not list the beginning date
 11 of the pay period. As Defendant admits in its Memorandum of Points and
 12 Authorities, "[n]one of the wage statements at issue use the phrase 'Period
 13 Beginning' to designate the first date o Brink's payroll period during which
 14 Plaintiff could have been paid" (Def.'s Memo. at p. 3:24-26). Instead,
 15 Defendant's wage statements contain only the pay period end date and the "Time
 16 Card Detail." Specifically, Defendant argues that its wage statements show the
 17 pay period beginning date based on the first date shown in the "Time Card Detail"
 18 section of the wage statement.¹ Defendant confuses days worked with the pay
 19 period beginning date. **They are not the same.** Although Defendant's wage
 20 statements purportedly identify the days worked that correspond to the paycheck,
 21 the days worked do not correspond to the pay period beginning or ending dates.
 22

23 In other words, the Time Card Detail section apparently refers to only a
 24 month and a day which the employee must surmise are dates worked, and nothing
 25 else. Moreover, the Time Card Detail does not even refer to the actual year that
 26

27
 28 ¹ Even if Defendant's argument is somehow entertained, the lack of the identification of a year in the Time Card
 Detail section stands as a further reason to deny this motion, as simply a month/day without a year, does not
 sufficiently qualify as identifying the *accurate inclusive dates* for which the employee is being paid.

1 the work was performed. Using the wage statement with the pay Advice Date of
2 February 22, 2013 as an example, under Defendant's argument, the inclusive dates
3 of the period for which the employee is paid would be "2/4" and "2/12," as those
4 are the earliest and latest dates identified in the Time Card Detail section. (Def.'s
5 Ex. 21). However, there are numerous problems with this argument. First, the
6 employee cannot determine the pay period beginning date by looking at the Time
7 Card Detail because the pay period beginning date is not the same as the days
8 worked in a pay period. What if on the same wage statement, Plaintiff also worked
9 on February 3, 2013? How is Plaintiff to know whether the hours worked on
10 February 3, 2013 is to be included on the wage statement with the pay Advice Date
11 of February 22, 2013, or some other wage statement? Indeed, this is the very
12 reason why wage statements are required to show the accurate pay period start date
13 and pay period end date – so that an employee can know which dates of work are
14 to be included and paid on the particular wage statement. Defendant's arguments
15 completely fly in the face of this very purpose.
16

17 This problem with Defendant's argument is further exemplified by the fact
18 the latest date on each Time Card Detail section does not match up with the
19 "Period Ending" date identified on each respective wage statement. As noted
20 above, this is a key distinction that highlights the fallacy in Defendant's arguments.

21 For example, Plaintiff's wage statement attached as Defendant's Exhibit 5,
22 page 28, shows a pay period ending date of January 6, 2013. However, the last day
23 on the Time Card Detail reports "1/4" as the last day and has eight total days
24 shown on the Time Card Detail.

25 Similarly, Plaintiff's wage statement attached as Defendant's Exhibit 6 at
26 page 29, shows a pay period ending date of January 20, 2013, but the Time Card
27 Detail lists "1/18" as the last day and a total of nine days. Adding to the confusion
28 is Plaintiff's wage statement attached as Defendant's Exhibit 7 at page 30, which

1 shows a pay period ending date of February 3, 2013, but the Time Card Detail lists
2 only two days, the last day of which is “1/23. This same pattern continues for all
3 of the wage statements.

4 So, this begs the question as to how the Time Card Detail can be used to
5 determine “the inclusive dates of the period for which the employee is being paid,”
6 in compliance with Labor Code Section 226(a)(6). The answer to this question is
7 that the Time Card Detail cannot be used to determine the pay period dates, as the
8 Time Card Detail information simply shows the dates and hours the employee
9 purportedly punched in/out of work, and nothing more.

10 However, there is even a further fallacy with respect to Defendant’s
11 arguments. Using the same February 22, 2013 pay Advice Date wage statement,
12 as noted above, Plaintiff was also paid vacation wages in addition to wages for her
13 hours worked. (*See* Def.’s Ex. 21, wage statement showing payment of \$303.60 in
14 vacation wages). Again, under Defendant’s argument, the inclusive dates for
15 which Plaintiff was being paid was “2/4” and “2/12.” However, given that the
16 Time Card Detail section does not identify the date(s) for which the vacation
17 wages were being, that simply begs the question as to which date(s) were such
18 vacation wages being paid? Are the vacation wages being paid for February 3,
19 February 11, February 15, or some other date(s)? In other words, how is Plaintiff
20 supposed to determine which date(s) the vacation wages are intended to cover?
21 Plainly put, Plaintiff cannot determine this information from Defendant’s wage
22 statements. Had Defendant’s wage statements clearly identified a specific pay
23 period begin date, Plaintiff would thus be able to determine within which dates her
24 vacation wages were being paid for. (Stafford Dec. at ¶ 5). Without having the
25 benefit of the wage statement identifying such information, Plaintiff is simply left
26 to guess on her own as to which date(s) such vacation wages were being paid for.
27 (*Id.*)
28

1 It was for such reasons that the *Willner* Court held that the employer's use of
 2 a similar time card detail in that case still violated Labor Code Section 226(a)(6).
 3 Again, here, neither Plaintiff nor any other employee can determine the pay period
 4 start date by looking at the Time Card Detail section of the wage statement because
 5 the work days listed in the Time Card Detail and the pay period start date differ.
 6 At a minimum, Plaintiff submits that adjudication of this dispute presents a triable
 7 issue which should not be summarily adjudicated pursuant to Defendant's Motion
 8 for Summary Judgment.

9 Finally, with respect to the wage statement with the pay Advice Date of
 10 March 8, 2013, wherein Plaintiff was solely paid for 8 hours of vacation wages and
 11 nothing else, such a wage statement is a clear violation of Labor Code Section
 12 226(a)(6). (Def.'s Ex. 22). As undisputed by Defendant, this wage statement does
 13 not even contain a Time Card Detail section. And as the same wage statement
 14 does not contain any other information referencing what the pay period begin date
 15 is or for which date(s) Plaintiff is being paid the vacation wages, Plaintiff clearly
 16 cannot even attempt to determine for which time period such vacation wages are
 17 being paid. (Stafford Dec. at ¶ 6). Despite whatever twists and spins Defendant
 18 tries to put on this, there is absolutely no doubt that such a wage statement fails to
 19 comply with Labor Code Section 226(a)(6).
 20

21 Based on the foregoing reasons, Defendant's arguments are illogical and
 22 without merit and, thus, this Motion must be denied in its entirety.

23 **C. Defendant's Wage Statements Do Not Provide "Transparency"**

24 Notwithstanding the fact that Defendant's wage statements do not list the
 25 "inclusive dates," Defendant argues that Plaintiff could have used the Time Card
 26 Detail to determine whether her pay was correct. This is a non-starter for a very
 27 fundamental reason. As Plaintiff testified, the Time Card Detail did not match up
 28 with the pay period:

1 Q. So are you confused because the last day you worked, January
2 4th, doesn't match up with the pay Period Ending date listed on
3 the top of the Earnings Statement, January 6th; is that why
you're confused?

4 B. **I'm confused because there's no beginning date. So it**
5 **throws off what my ending date is.** It says the 6th here; it says
the 4th, so –

6 Q. So you wouldn't expect -- well, let me try that again. The
7 ending -- I'm trying to understand what the source of your
8 confusion is about the ending date – the Period Ending date not
matching the last day you worked during that two-week period.

9 A. **Because there's two different dates, and there's no**
10 **beginning date** -- because here it says Monday, there's no
Tuesday, Wednesday, Thursday, Friday, then there's Monday,
11 Wednesday, Thursday, Friday again, and there's no beginning
date. **I don't know when the pay period started.**

12 (Stafford Dep. 31:7-25, emphasis added).

13 As Plaintiff further testified, based on these differences, she could not
14 ascertain whether her pay was accurate based on the inconsistent Time Card
15 Detail:

16 Q. You don't know whether you checked your paycheck which –

17 A. I checked my paychecks, but I didn't -- there was no starting
18 date, **so it was hard for me to know what week I was getting**
19 **paid for ... because there was no beginning date.**

20 (Stafford Dep. 20:23-21:4, emphasis added, *see also* 54:12-17).

21 None of the authorities cited by Defendant change this result. In other
22 words, none of the cases hold that an employer can comply with Section 226(a)(6)
23 by failing to include the pay period start date, but instead including a Time Card
24 Detail which is inconsistent with the pay period end date.

25 For example, *Morgan v. United Retail, Inc.*, 186 Cal. App. 4th 1136 (2010),
26 did not address the issues presented here. Rather, *Willner*, *McKenzie*, and *Lopez*,
27 expressly addressed Section 226(a)(6)'s requirement to list the pay period start
28 date. In stark contrast, in *Morgan*, the Court of Appeal addressed whether a wage

1 statement that separately listed the total regular hours and the total overtime hours
 2 worked during a pay period violated Labor Code Section 226(a)(2). *Id.* at 1148.
 3 As such, the *Morgan* Court did not address the issues here, and thus is inapplicable
 4 to the current Motion.

5 Likewise, *Hernandez v. BCI Coca-Cola Bottling Co.*, 2012 U.S. Dist.
 6 LEXIS 55301 (C.D. Cal. Apr. 12, 2012), was limited to the same issues presented
 7 in *Morgan*, in that the employer's stubs failed to separately list overtime and
 8 regular time on the paystub. Thus, Defendant's citation of *Hernandez* is without
 9 merit.

10 **D. Plaintiff Has Suffered the Requisite Injury**

11 In *Willner*, the Court held that the employee established injury, as a matter
 12 of law, arising from the employer's failure to include the pay period start date:
 13 "[t]he Court concludes that ... an employee cannot promptly determine from the
 14 wage statements alone ... the start date of the pay period Accordingly, the
 15 evidence before the Court establishes that Willner suffered injury within the
 16 meaning of Section 226(e)." 2014 WL 1303495, at *12. Thus, Plaintiff submits
 17 that she has established injury, as a matter of law.
 18

19 Moreover, as the Court is aware, California Labor Code Section 226(e) was
 20 amended by S.B. 1255, effective January 1, 2013, in which the Legislature
 21 reaffirmed the general principle that

22 An employee is ***deemed to suffer injury*** for purposes of this
 23 subdivision if the employer fails to provide accurate and complete
 24 information as required by any one or more of items (1) to (9),
 25 inclusive, of subdivision (a) and the employee cannot promptly and
 26 easily determine from the wage statement alone one or more of the
 27 following: ... any of the other information required to be provided on
 28 the itemized wage statement pursuant to items (2) to (4), ... **(6)**
[inclusive pay periods], and (9) of subdivision (a).

(Emphasis added).

1 Through S.B. 1255, the Legislature intended to clarify Labor Code Section
 2 226(e)'s injury requirement. *See, e.g., Soto v. Diakon Logistics (Delaware), Inc.*,
 3 2013 WL 4500693, *9 (S.D. Cal. 2013) ("The Senate Bill Analysis indicates that
 4 because of the contradictory and inconsistent interpretations of what constitutes
 5 'suffering injury' ... in the various court cases ... it is necessary to provide further
 6 clarity on the issue'") (*Seckler v. Kindred Healthcare Operating Group, Inc.*, 2013
 7 WL 812656, *11-12 (C.D. Cal. 2013)); *Fields v. West Marine Prods. Inc.*, 2014
 8 WL 547502, *8 (N.D. Cal. 2014) ("Plaintiffs cite decisions holding that the injury
 9 requirement is minimal. This interpretation is reinforced by the 2013 statutory
 10 amendment to Section 226 *clarifying* the injury requirement by providing a
 11 statutory definition.") (Emphasis added).

12 Defendant agrees that the amended version of Labor Code Section 226(e)
 13 applies. (*See* Def.'s Memo. at pp. 12:27-13:8). Again, here, it is undisputed that
 14 Plaintiff could not ascertain the pay period by simply looking at the wage
 15 statement itself, including the Time Card Detail, given that the Time Card Detail
 16 did not match up with the pay period end date. (Stafford Dep. 31:7-25; *see also*
 17 Stafford Dec. at ¶¶ 4-6). As such, Plaintiff could not ascertain from her wage
 18 statements the pay period dates for which she was being paid on each wage
 19 statement. (Stafford Dep. 20:23-21:4, 54:12-17; *see also* Stafford Dec. at ¶¶ 4-6).
 20 Accordingly, it is undisputed that Plaintiff has suffered injuries under Labor Code
 21 Section 226(e).
 22

23 Further, notwithstanding the Legislature's relaxation of Section 226(e)'s
 24 injury provision, numerous courts have all held that the injury requirement is
 25 "modest" and that a "minimal showing" will suffice. For example, in *Jaimez v.*
 26 *DAIOHS USA, Inc.*, 181 Cal. App. 4th 1286, 1305-1307 (2010), the California
 27 Court of Appeal explained that "[w]hile there must be some injury in order to
 28 recover damages, a very **modest showing** will suffice." *Id.* at 1305-1307

(emphasis added, citing *Wang v. Chinese Daily News, Inc.*, 435 F. Supp. 2d 1042, 1050-51 (C.D. Cal. 2006) and *Elliot v. Spherion Pacific Work, LLC*, 572 F. Supp. 2d 1169, 1180-81 (C.D. Cal. 2008)); *see also McKenzie v. Federal Exp. Corp.*, 275 F.R.D. 290, 300 (C.D. Cal. 2011) (“the injury element in section 226(e) only requires a ‘very modest showing’”).

Thus, courts have held that injury can be established if employees are forced to review other documents to see if their pay is accurate. *Jaimez*, 181 Cal. App. 4th at 1306-1307; *Morgan*, 186 Cal. App. 4th at 1228-29 (an employer violates Labor Code Section 226 if an employee must to refer to other documents to calculate his wages); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222, 1229 (C.D. Cal. 2011) (same); *Elliot*, 572 F. Supp. 2d at 1181 (same).

Again, the wage statement and Time Card Detail here were not the same as the pay period. To the contrary, in each of the wage statements submitted by Defendant, the pay period end date is different from the last date worked on the paystub. Thus, for Plaintiff to determine whether she was paid properly in each pay period, Plaintiff would have to line up all of her wage statements next to each other along with her actual time punches maintained in Defendant’s time clocks. (*See* Fact No. 11; Stafford Dec. at ¶ 7). As such, it is actually undisputed that Plaintiff was required to refer to other documents in attempting to verify the accuracy of the Time Card Detail. Therefore, the Time Card Detail is not sufficient, in and of itself, to provide the “inclusive dates for which” Plaintiff was being paid.

E. Defendant’s Failure to List the Pay Start Date Is Knowing and Intentional

As explained by the District Court in *Willner*, 2014 WL 1303495, at *11, the plaintiff need only show that the defendant knew that its wage statements did not contain the pay period start date. Significantly, the *Willner* Court explained that

1 the plaintiff need not show that the defendant knew that its conduct was unlawful.
2 *Id.*

3 This is consistent with the California Court of Appeal’s definition of
4 “willful” or intentional conduct. As explained by the Court of Appeal in *Gonzalez*
5 *v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36, 54 (2013):

6 [T]o be at fault within the meaning of [section 203], the employer’s
7 refusal to pay need not be based on a deliberate evil purpose to
8 defraud workmen of wages which the employer knows to be due. As
9 used in section 203, “willful” merely means that the employer
intentionally failed or refused to perform an act *which was required to*
be done.

10 *Id.* (Emphasis in original, citing *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314
11 (2005)).

12 Here, it is undisputed that Defendant intentionally omitted the pay period
13 start date from Plaintiff’s paystubs. To be sure, as Virginia Fuentes, Defendant’s
14 Human Resources Manager, West Region, states in her declaration, “[b]y including
15 the ‘Time Card Detail’ section on the wage statements, Brink’s *intended* to
16 accurately itemize the amount Brink’s was paying Plaintiff for the hours she
17 worked.” (Fuentes Dec. at ¶ 6, emphasis added). In other words, Defendant
18 “intended” to rely on the Time Card Detail to provide Plaintiff with the “inclusive
19 dates” of the pay period, even though the actual dates listed in the Time Card
20 Detail markedly differed from the actual pay period end date as discussed above.
21 Thus, Defendant was not only aware that its wage statements did not include the
22 pay period start date, but it “intended” to omit them and instead rely on the Time
23 Card Detail, which is unlawful. As such, Defendant’s violation of Labor Code
24 Section 226(a)(6) was “knowing and intentional.”

25 And, contrary to Defendant’s assertions, Defendant need not believe that its
26 conduct was unlawful, nor must Plaintiff prove as such. Again, in *Willner*, the
27 Court rejected the rule that a plaintiff must prove that the defendant acted knowing
28

1 that its conduct was unlawful. 2014 WL 1303495, at *11. Accordingly, whether
 2 Defendant believed that its conduct was lawful is irrelevant and is not a defense to
 3 a violation of Labor Code Section 226. Indeed, Labor Code Section 226 was
 4 enacted in 1943. Therefore, Defendant must have known of its requirements,
 5 given that it has conducted business in this State since 1927 (as shown in
 6 California Secretary of State corporate records).

7 However, in the event that the Court is inclined to grant this Motion on this
 8 ground, Plaintiff requests a continuance (as discussed below) to conduct discovery,
 9 including taking the deposition of Defendant's Rule 30(b)(6) on the knowing and
 10 intentional element. Without affording Plaintiff the opportunity to take the
 11 deposition of Defendant's Rule 30(b)(6) witness, Defendant argues in conclusory
 12 fashion that its conduct was not "knowing and intentional," such that Plaintiff
 13 cannot recover penalties under Labor Code Section 226(e). If the Court is inclined
 14 to grant the Motion, Plaintiff requests leave to complete the deposition of
 15 Defendant's Rule 30(b)(6) witness on this topic.
 16

17 **F. Plaintiff's PAGA Claim Need Not Establish Any Injury or**
 18 **Knowing and Intentional Elements**

19 As Defendant has failed to carry its burden to show that it is entitled to
 20 summary judgment on Plaintiff's Labor Code Section 226(a) claim, Defendant
 21 cannot obtain summary judgment on Plaintiff's claim asserted pursuant to the
 22 Private Attorney General's Act (the "PAGA"), California Labor Code Section
 23 2698, *et seq.*

24 Notwithstanding, even if this Court were inclined to dismiss Plaintiff's First
 25 Cause of Action due to the absence of injury or knowing/intentional elements,
 26 Plaintiff's PAGA claim must still survive. As numerous District Courts have held,
 27 while PAGA claims predicated upon violations of Labor Code § 226(a) need not
 28 establish any injury or that Defendant's violation was knowing and intentional, as

1 such elements are not necessary in order to prevail on a PAGA cause of action.
 2 *Willner*, 2014 WL 1303495, at *15 (“Willner is not required to establish injury in
 3 order to obtain judgment on [the PAGA] claim. All she needs to establish is a
 4 violation of section 226(a).”); *McKenzie*, 765 F. Supp. 2d at 1231-32 (“the Court
 5 holds that McKenzie does not need to prove that she suffered injury, as required
 6 under Section 226(e), to recover civil penalties under PAGA”); *Lopez*, 2010 WL
 7 2839417, at *6 (holding that the plaintiff could recover PAGA penalties even
 8 though the plaintiff did not allege, nor prove injury under Labor Code Section
 9 226(e)). ().

10 As such, Plaintiff’s PAGA cause of action can survive even if Plaintiff’s first
 11 cause of action is dismissed.

12 **IV. IN THE EVENT THAT THE COURT IS INCLINED TO GRANT**
 13 **THIS MOTION, PLAINTIFF RESPECTFULLY REQUESTS A**
 14 **CONTINUANCE SO THAT PLAINTIFF CAN CONDUCT**
 15 **ADDITIONAL DISCOVERY**

16 In the event that this Court is inclined to grant Defendant’s Motion for
 17 Summary Judgment, Plaintiff respectfully requests a continuance so that Plaintiff
 18 can complete the deposition of Defendant’s Federal Rule of Civil Procedure
 19 30(b)(6) witness(es). Pursuant to Federal Rule of Civil Procedure 56(d):

20 If a nonmovant shows by affidavit or declaration that, for specified
 21 reasons, it cannot present facts essential to justify its opposition, the
 22 court may:

- 23 (1) defer considering the motion or deny it;
 24 (2) allow time to obtain affidavits or declarations or to take discovery;
 25 or
 26 (3) issue any other appropriate order.

27 Summary judgment may not be granted until the court first determines the
 28 merits of the opposing party’s request for a continuance. *Garrett v. City & County*

1 of *San Francisco*, 818 F.2d 1515, 1518-19 (9th Cir. 1987). It is an abuse of
 2 discretion to deny a continuance if: (1) the non-moving party has diligently
 3 pursued previous discovery opportunities; and (2) the additional discovery could
 4 have precluded summary judgment. *Clark v. Capital Credit & Collection Serv.,*
 5 *Inc.*, 460 F.3d 1162, 1178-79 (9th Cir. 2006).

6 Here, Plaintiff has been diligent in conducting discovery. As set forth in
 7 Plaintiff's counsel's Declaration, on February 27, 2014, Plaintiff propounded her
 8 First Set of Interrogatories and Requests for Production of Documents. (Hyun
 9 Dec. at ¶ 3, Exs. "A" & "B"). On March 31, 2014, Defendant served purported
 10 "responses" to Plaintiff's written discovery, which consisted solely of objections
 11 and, in particular, Defendant refused to respond at all because of Plaintiff's Motion
 12 for Remand to Superior Court. (*Id.* at ¶ 4, Exs. "C" & "D"). As such, on April 1,
 13 2014, Plaintiff's counsel sent an email to Defendant's counsel, requesting to
 14 conduct a meet and confer pursuant to Local Rule 37-1. (*Id.* at ¶ 5, Ex. "E").
 15 Accordingly, on April 10, 2014, the parties conducted an in-person meet and
 16 confer. (*Id.* at ¶ 5). Pursuant to those meet and confer discussions, Defendant
 17 agreed to supplement its responses. (*Id.* at ¶ 5 and Exs. "F"- "H"). Upon review of
 18 said responses and all of Defendant's document production, on June 26, 2014,
 19 Plaintiff sent a draft Notice of Deposition of Defendant's Rule 30(b)(6)
 20 Witness(es), asking Defendant's counsel to coordinate a mutually agreeable date
 21 upon which to depose the person(s) most qualified. (*Id.* at ¶ 6, Ex. "I").
 22 Defendant's counsel did not respond. Instead, on June 30, 2014, Defendant's
 23 counsel filed this Motion for Summary Judgment. (*Id.*) On the same day that
 24 Defendant's counsel filed this Motion for Summary Judgment, Plaintiff's counsel
 25 served the Notice of Deposition of Defendant's Rule 30(b)(6) Witness(es), setting
 26 the deposition for July 2, 2014. (*Id.* at ¶ 7, Ex. "J"). Plaintiff's counsel informed
 27 Defendant's counsel that he needed to conduct the deposition in connection with
 28

1 the Motion for Summary Judgment. (*Id.*) Nevertheless, Defendant's counsel
 2 responded by stating that she would not produce any witnesses even though said
 3 testimony was pertinent to opposing this Motion. (*Id.* at ¶ 7, Ex. "K").

4 For example, whether Defendant's conduct was knowing and intentional
 5 could be ascertained through a Rule 30(b)(6) deposition. Indeed, in *Willner*, 2014
 6 WL 1303495, at *11, the plaintiff presented the defendant's Rule 30(b)(6) witness'
 7 deposition testimony in which she testified that she was aware that the wage
 8 statements did not include the pay period start date. *Id.* Likewise, in this case,
 9 Plaintiff's counsel should be afforded the opportunity to take Defendant's Rule
 10 30(b)(6) witness(es)' deposition to fully oppose this Motion for Summary
 11 Judgment.

12 **V. CONCLUSION**

13 For the reasons stated above, Defendant's Motion for Summary Judgment
 14 should be denied, with prejudice. In the event that the Court is inclined to grant
 15 the Motion, Plaintiff respectfully requests a continuance so that she can take the
 16 deposition of Defendant's Rule 30(b)(6) witness(es).
 17

18 Dated: July 7, 2014

HYUN LEGAL, APC

19 By: /s/ Dennis S. Hyun

20 Dennis S. Hyun

21 Attorneys for Plaintiff and the Class
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